IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.651 OF 2007

N. Arun Swamy alias Narayanswami ..Petitioners
Arun Swamy and ors.

V/s.

Reserve Bank of India & ors. ..Respondents

Ms.Rajani Iyer, Senior Advocate with Mr.M.P.Vashi i/b. Soloman & Co. for the petitioners
Mr.P.K.Samdhani, Senior Advocate with Mr.K.G.Munshi i/b. Udwadia and Udeshi for respondent Nos.1 and 2
Ms.Bharti Mahant for respondent No.3
Mr.N.P.Pandit, AGP
Mr.Chaugule i/b. Nina Chaugule & Associates for respondent No.10

CORAM : J.N.PATEL & A.A.SAYED, JJ.

DATE : 16TH AUGUST, 2007

P.C.

1. Heard learned counsel for the parties. The petitioners have invoked extraordinary jurisdiction of this Court under Article 226 of the Constitution of India seeking relief of declaration that the second and third proviso of Section 16(1) and clause (b) of Section 16(4) of the Deposit

Insurance and Credit Guarantee Corporation Act, 1961 as also the provisions of sub section (2) of Section 21 of the said Act and the provision contained in clause 22 of the Deposit Insurance and Credit Guarantee Corporation General Regulations, 1961 are unconstitutional, ultra vires, illegal, invalid and null and void. Similarly, seeking a declaration that sub section (f) of Section 45(5) of the Banking Regulation Act, 1949 is unconstitutional, ultra vires, illegal, invalid and null and void. In the alternative, the petitioner prays to enable the petitioner to withdraw their deposits by directing the respondent No.6 to discharge its obligations towards depositors and creditors.

2. The crux of the case put forth by the petitioners to seek such a declaration and order of this Court is the inability of the respondent Nos.1, 4 & 5 in controlling and regulating the affairs of the respondent No.6 which is in the state of liquidation and under the management of an administrator. It was further contended that

inspite of various checks and balances provided by law to regulate such financial institutions, the authorities have failed to secure the interest of depositers, like the petitioners.

3. It was further contended that though, Central Government has enacted a law to take care of interest of the depositors and has constituted a statutory body, i.e.respondent No.2, which is supposed to ensure the interest of the depositors, it has failed to discharge its responsibility after respondent No.6 Co-operative Bank has gone into liquidation jeopardising deposits of its customers. It is, therefore, contended that as the respondents are charging huge sums of money from depositors , particularly, respondent No.2 by way of insurance fees it has only secured the interest of the depositors to the extent of Rs.100,000/- which is arbitrary in nature and therefore, this Court should examine the issue and quash and set aside the arbitrary provisions of the Act.

4. We have heard the learned counsel for the

parties and gone through the pleadings and find that subject matter of the petition is within the realm of the legislative competence and respondent No.2 is a creature of a statute which was enacted with owed object and purpose “to protect the interest of depositors in financial institutions” as a matter of public policy over which respondent No.1 has supervision and control. It will not be proper for this Court to interfere in the matter particularly when it does not have the financial expertise which is possessed by respondent No.1 in the matter of regulating and controlling the functioning of financial institutions including co-operative Banks.

5. It was urged before us that arbitrary nature of the provisions is writ large as only those depositors whose deposits are within a sum of Rs.1,00,000/- are protected by respondent No.2 and this is unfair to the depositors having deposits of more than Rs.1,00,000/- in the Co-operative Banks or any financial institutions for that reason. It was submitted that the depositors are charged for

insurance of the total amount of deposit, which may be more than Rs.1,00,000/- as per the percentage prescribed from time to time, but the benefit in the nature of protection is extended only to the deposits upto Rs.1,00,000/- which is arbitrary and discriminatory and such provisions are ultra vires and deserves to be struck down.

6. This Court made a specific query to the learned counsel appearing on behalf of the petitioner as to whether the petitioners seek to challenge levy of insurance fees/charges as unjust without any quid pro quo in the context of ensuring insurance cover to the total amount of deposit rather than restricting it to a sum of Rs.1 lac. Learned counsel for the petitioner submits that that is not the issue and the petitioners do not propose to challenge such unjust enrichment on the part of respondent No.2. It only wants the Court to declare that the total amount of the depositors stand protected by virtue of the insurance of the depositors with the financial institution.

7. In our view such classification i.e.to protect the interest of depositors to the extent of Rs.1,00,000/- cannot be said to be unreasonable and is a matter of public policy. In view of the fact that the petitioners do not propose to challenge the charging of premium over and above the amount covered by the insurance i.e. Sum of Rs.1,00,000/- even relief sought in the alternative besides challenging the constitutional validity of cerain provision of the said Act cannot be considered. We do not find any merits in the matter for interference. Petition is dismissed.

(J.N.PATEL, J.)

(A.A.SAYED, J.)